

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: 5/16/06

Division: County Attorney

Bulk Item: Yes xx No     

Staff Contact: Bob Shillinger x3474

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**AGENDA ITEM WORDING:**

Approval of Second (Osborne) and Third (Conch Contrada) Amended Settlement Agreements in *Richard M. Osborne & Conch Contrada LC v. Monroe County & Joe Paskalik*, CA K 01-108.

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**ITEM BACKGROUND:**

Under the proposed Second and Third Amended Settlement Agreements, both Plaintiffs are seeking one year deferrals of the proposed development already agreed to in prior settlement agreements. The projects would be deferred until ROGO Year 15 (July 14, 2006 to July 13, 2007). The Second Amended Settlement Agreement (Osborne) also acknowledges that Keys Federal Credit Union is Richard Osborne's successor in interest to the subject property.

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**PREVIOUS RELEVANT BOCC ACTION:**

In **July 2002**, BOCC approved settlement agreement with both Osborne and Conch Contrada settling an inverse condemnation or takings case by authorizing specified development on two properties fronting U.S. 1 on Stock Island.

Under original settlement agreement, Osborne was granted authorized to build a 35,200 sq.ft. mini storage warehouse, a major conditional use, and received a parking variance from 105 spaces to 87 spaces. In **March of 2003**, the parties agreed to amend Osborne's settlement agreement to authorize a 25,120 sq.ft. credit union/banking facility by end of ROGO Year 14 instead of a 35,200 sq.ft. ministorage warehouse by end of ROGO Year 12 and reduced parking to 78 spaces due to smaller scale of project.

Under original settlement agreement, Conch Contrada was authorized to construct a 7,500 sq.ft. restaurant, a minor conditional use. Conch Contrada also agreed to relocate on sight existing sewage treatment plant and relocate a shared driveway in ROGO year 11. In **May of 2003**, the parties agreed to amend Conch Contrada's settlement agreement to permit as an alternative use a 7,500 sq.ft. medium intensity, mixed use retail or professional office space instead of a restaurant and to defer development from ROGO year 11 until ROGO Year 12. In **January 2005**, the BOCC agreed to defer development from ROGO Year 12 until ROGO Year 14.

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**CONTRACT/AGREEMENT CHANGES:** N/A

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**STAFF RECOMMENDATIONS:** Approval

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**TOTAL COST:** N/A

**BUDGETED:** N/A

**COST TO COUNTY:** N/A

**SOURCE OF FUNDS:** N/A

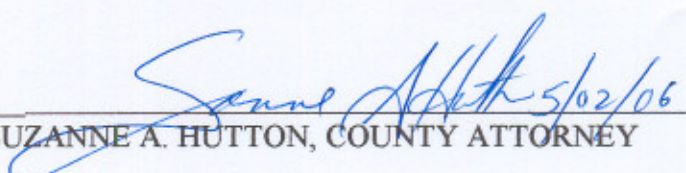
**REVENUE PRODUCING:** Yes      No     

**AMOUNT PER MONTH** n/a **Year** N/A

**APPROVED BY:** County Atty      OMB/Purchasing      Risk Management



**DIVISION DIRECTOR APPROVAL:** \_\_\_\_\_

 5/02/06  
SUZANNE A. HUTTON, COUNTY ATTORNEY

**DOCUMENTATION:**

Included xx

Not Required \_\_\_\_\_

**DISPOSITION:** \_\_\_\_\_

**AGENDA ITEM #** \_\_\_\_\_

Revised 1/03

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL  
CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

RICHARD M. OSBORNE, as Trustee;  
and CONCH CONTRADA, L.C., a  
Florida Limited Liability Company,  
Plaintiff/Petitioners,

Case No. CA-K-01-108

v.

MONROE COUNTY, a political  
subdivision of the State of Florida;  
and JOSEPH PASKALIK, in his official  
capacity as Building Official,  
Defendant/Respondents

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THIRD AMENDED SETTLEMENT AGREEMENT AS TO CONCH CONTRADA, L.C.

Plaintiff CONCH CONTRADA, L.C., a Florida Limited Liability Company ("Conch Contrada"), and Defendants, MONROE COUNTY, a political subdivision of the State of Florida ("Monroe County"), and JOSEPH PASKALIK, in his official capacity as Building Official ("Paskalik"), (collectively, the "Parties"), previously resolved their differences which gave rise to the above-styled action, wherein the parties agreed to settle the matter between them upon the terms and conditions recited in paragraphs 2, 3, and 5 in the Settlement Agreement dated July 17, 2002, hereinafter "Original Settlement Agreement," attached hereto as Exhibit "A". The Settlement Agreement was previously amended to provide for a change in the conditional use and to extend the time period for building permit application and construction of the approved conditional use.

1. The parties agree to amend the (second) Amended Settlement Agreement as follows:

a. Paragraph 5 is amended to now read:



Conch Contrada agrees to submit an application for Amended Conditional Use Order that reflects the intended change in use, should Conch Contrada decide to develop the subject property with an alternative use(s). Upon approval of the Amended Conditional Use Order by the Planning Director, and in accordance with the development orders referred to in Paragraph 2 of the Original Settlement Agreement, Monroe County agrees to process promptly upon submittal the application for building permit by Conch Contrada or its assigns for construction of one 7,500 square foot restaurant, or as an alternative, a 7,500 square foot medium-intensity, mixed use, retail and/or office/professional use facility in *ROGO Year 15* (July 14, 2006 - July 13, 2007).

2. The parties further agreed that no provision in this agreement shall exempt Plaintiff Conch Contrada LC from any requirements imposed by statute and/or ordinance to connect to a central sewage system when one becomes "available" as that term is defined by statute and/or ordinance.
3. Plaintiff Conch Contrada, in cooperation with Monroe County, will prepare and submit to the Court pleadings or notice required to address the Amended Settlement Agreement. Conch Contrada shall pay any costs incurred as a result of filing this Second Amended Settlement Agreement and any associated pleadings or notices with the exception that each party shall bear its own attorney's fees.
4. All parties acknowledge that the original agreement was entered into for the purpose of settling pending litigation and that this Second Amended Settlement Agreement does not constitute an admission or evidence that any actions of



Monroe County or its employees that Plaintiffs Complain of were unlawful, unconstitutional or deprived Plaintiffs or any others of any rights or property.

5. All other terms of the Settlement Agreement dated July 17, 2002, and the (first) Amended Settlement agreement which was approved by the Board on or about May 21, 2003, and the Second Amended Settlement Agreement which was approved by the Board on or about January 19, 2005, especially as it pertains to Conch Contrada, L.C., shall remain in full force and effect.
6. This Amended Agreement shall not be valid and binding upon the parties until approved by the Court and incorporated into a Third Amended Final Judgment entered by the Court in these proceedings.
7. Until this Third Amended Settlement Agreement has been approved by the Court pursuant to the preceding paragraph, the Original Settlement Agreement and Judgment previously entered, and any subsequent approved amendments or modifications shall remain in full force and effect.

ATTEST:  
DANNY L. KOLHAGE  
CLERK:

By: \_\_\_\_\_  
Deputy Clerk  
Dated: \_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Charles McCoy, Mayor of  
Monroe County

MONROE COUNTY BLDG. OFFICIAL

By: \_\_\_\_\_  
Joseph Paskalik

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

\_\_\_\_\_  
ROBERT B. SHILLINGER, JR.  
ASSISTANT COUNTY ATTORNEY

Date 5-2-05

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Printed Name of Witness

CONCH CONTRADA, LC

By: \_\_\_\_\_  
Libby Trevor



IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL  
CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

RICHARD M. OSBORNE, as Trustee;  
and CONCH CONTRADA, L.C., a  
Florida Limited Liability Company,

Plaintiffs/ Petitioners,

Case No. CAK-01-108

v.

MONROE COUNTY, a political  
subdivision of the State of Florida;  
and JOSEPH PASKALIK, in his official  
capacity as Building Official,

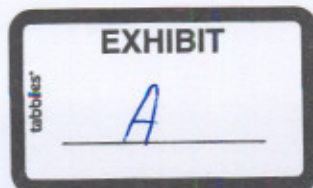
Defendant/ Respondents.

FILED FOR RECORD  
02 JUL 24 PM 4:33  
CLERK OF COURT  
MONROE COUNTY, FLA.

SETTLEMENT AGREEMENT

Plaintiffs RICHARD M. OSBORNE, as Trustee ("Osborne"), and CONCH CONTRADA, L.C., a Florida Limited Liability Company ("Conch Contrada"), and Defendants, MONROE COUNTY, a political subdivision of the State of Florida ("Monroe County"), and JOSEPH PASKALIK, in his official capacity as Building Official ("Paskalik"), having amicably resolved their differences which gave rise to this action, hereby agree to settle this matter between them upon the following terms and conditions:

1. As to Osborne, Monroe County agrees: a) that a Major Conditional Use to construct a 35,200 sq. ft. mini-storage warehouse has been approved, with conditions, by Monroe County Planning Commission on January 27, 1997, under Resolution No. P3-97, recorded at O. R. Book 1446, pages 2205 - 2207; b) that a variance with regard to off-street parking, reducing the number of required parking spaces from 3.0 to 2.5 per 1,000



*[Handwritten signature]*



sq. ft. of floor area for the proposed mini-storage warehouse was granted by the Monroe County Planning Commission on January 17, 1997, under Resolution No. P2-97; and, c) that both development orders are presently valid and in full force and effect.

2. As to Conch Contrada, L.C., Monroe County agrees: a) that a Minor Conditional Use Development Order No. 5-99 to construct one 7,500 square foot restaurant, to relocate an existing sewage treatment facility, and to locate a shared driveway, was approved, with conditions, by the Planning Director of Monroe County on August 4, 2000, recorded in OR Book 1654, pages 1591-1595; and, b) that this development order is presently valid and in full force and effect.

3. Notwithstanding anything in any of the development orders referred to in paragraphs 1 or 2, above (and, specifically Condition No. 1 in Conditional Use Development Order No. 5-99), or any other provision of the Comprehensive Plan or Ordinances of Monroe County, no building permit shall be denied to either Osborne or Conch Contrada, L.C., on the basis of Monroe County's regulations relating to non-residential rate of growth or the adoption (or lack of adoption) of a nonresidential permit allocation system or its equivalent, including, but not limited to, the regulations set forth in Monroe County Comprehensive Plan Policies 101.3.1 through 101.3.5, and Monroe County Ordinance No. 032-2001.

4. In accordance with the development orders referred to in paragraph 1, above, Monroe County agrees to process promptly upon submittal Osborne's application for building permit for construction of a 35,200 sq. ft. mini-storage warehouse in ROGO Year 12 (July 14, 2003, through July 13, 2004).



5. In accordance with the development order referred to in paragraph 2, above, Monroe County agrees to process promptly upon submittal Conch Contrada's application for building permit for construction of one 7,500 square foot restaurant, to relocate an existing sewage treatment facility, and to locate a shared driveway, in ROGO Year 11 (July 14, 2002, through July 13, 2003).

6. Except as expressly provided herein, Osborne and Conch Contrada, L.C., Monroe County and Paskalik, waive any claim that each asserted or was capable of asserting in this cause and each shall bear its own attorney's fees and costs of this proceeding. In particular, and without limitation, Osborne and Conch Contrada, L.C., on behalf of themselves, their members, beneficiaries and any others claiming by or through them, waive all claims for damages and compensation for denial of due process and inverse condemnation (also referred to as regulatory or temporary taking) arising from the County's actions and regulations prior to the date of this Settlement Agreement.

7. The Plaintiffs Osborne and Conch Contrada, L.C. will prepare and submit to the Court a "Notice of Voluntary Dismissal With Prejudice" of their present claims against the Defendants.

8. All parties acknowledge that this agreement is entered into for the purpose of settling pending litigation and does not constitute an admission or evidence that any actions of Monroe County or its employees that Plaintiffs complain of were unlawful, unconstitutional or deprived Plaintiffs or any others of any rights or property.

Katherine Peters  
Witness  
Katherine Peters  
(Print Name of Witness)

Charles "Sonny" McCoy  
Charles "Sonny" McCoy, Mayor of  
Monroe County  
Dated 07-17-02

[Signature]  
Witness

CILLEEN GARDNER  
(Print Name of Witness)

[Signature]  
Witness

Theresa J. Smith  
(Print Name of Witness)

Michelle Nichols  
Witness  
Michelle Nichols  
(Print Name of Witness)

[Signature]  
Joseph Paskalik, as Building Official  
For Monroe County  
Dated 7-16-02

[Signature]  
Richard M. Osborne, Trustee

Dated 5-21-2002

[Signature]  
Conch Contrada, L.C.  
Dated 5/20/02

Approved as to legal sufficiency

By: [Signature]  
Mark S. Ulmer, Esq.  
Special Counsel to Monroe County



IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL  
CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

RICHARD M. OSBORNE, as Trustee;  
and CONCH CONTRADA, L.C., a  
Florida Limited Liability Company,  
Plaintiff/Petitioners,

Case No. CA-K-01-108

v.

MONROE COUNTY, a political  
subdivision of the State of Florida;  
and JOSEPH PASKALIK, in his official  
capacity as Building Official,  
Defendant/Respondents

---

SECOND AMENDED SETTLEMENT AGREEMENT

Plaintiffs RICHARD M. OSBORNE, as Trustee ("Osborne"), and CONCH CONTRADA, L.C., a Florida Limited Liability Company ("Conch Contrada"), and Defendants, MONROE COUNTY, a political subdivision of the State of Florida ("Monroe County"), and JOSEPH PASKALIK, in his official capacity as Building Official ("Paskalik"), previously resolved their differences which gave rise to the above-styled action, wherein the parties agreed to settle the matter between them upon the terms and conditions recited in the Settlement Agreement dated July 17, 2002, hereinafter "Original Settlement Agreement," attached hereto as Exhibit "A". On March 19, 2003, the Board of County Commissioners of Monroe County approved the Amended Settlement Agreement, hereinafter "Amended Settlement Agreement" attached hereto as Exhibit "B".

The parties agree to amend the (amended) settlement agreement as follows:

1. The Keys Federal Credit Union, as successor in interest to Osborne, has received through the Amended Settlement Agreement Major Conditional Use Approval to



construct a 25,120 square foot credit union, banking or financial institution office facility requiring 74 parking spaces plus 4 handicap parking spaces during *ROGO Year 15*.

2. Notwithstanding anything in any of the development orders referred to in the Original or Amended Settlement Agreement, or any other provision of the Comprehensive Plan or Ordinances of Monroe County, no building permit shall be denied to Osborne on the basis of Monroe County's regulations relating to non-residential rate of growth or the adoption (or lack of adoption) of a nonresidential permit allocation system or its equivalent, including, but not limited to, the regulations set forth in Monroe County Comprehensive Plan Policies 101.3.1 through 101.3.5, and Monroe County Ordinance No. 032-2001.
3. In accordance with the development orders referred to in paragraph 1 of the Original Settlement Agreement, Monroe County agrees to process promptly upon submittal the application for building permit by Osborne or his assigns for construction of mini-storage warehouse per the Original Settlement Agreement during ROGO Year 12 or the alternative 25,120 sq. ft. credit union, banking or financial institution office facility in *ROGO Year 15* (July 14, 2006, through July 13, 2007).
4. Except as expressly provided herein, Osborne and Monroe County and Paskalik, waive any claim that each asserted or was capable of asserting in this cause and each shall bear its own attorney's fees and costs of this proceeding. In particular, and without limitation, Osborne, on behalf of itself, their heirs, successors, beneficiaries and any others claiming by or through them, waive all claims for



damages and compensation for denial of due process and inverse condemnation (also referred to as regulatory or temporary taking) arising from the County's actions and regulations prior to the date of this Amended Settlement Agreement.

5. Plaintiff Osborne, in cooperation with Monroe County, will prepare and submit to the Court pleadings or notice required to address the Amended Settlement Agreement.
6. All parties acknowledge that the Original Settlement Agreement was entered into for the purpose of settling pending litigation and that this Amended Settlement Agreement does not constitute an admission or evidence that any actions of Monroe County or its employees that Plaintiffs Complain of were unlawful, unconstitutional or deprived Plaintiffs or any others of any rights or property.
7. All other terms of the Original Settlement Agreement dated July 17, 2002, shall remain in full force and effect.
8. This Second Amended Agreement shall not be valid and binding upon the parties until approved by the Court and incorporated into an Amended Final Judgment entered by the Court in these proceedings.
9. Until this Second Amended Settlement Agreement has been approved by the Court pursuant to Paragraph 8 above, the Original Settlement Agreement and Judgment previously entered and unmodified shall remain in full force and effect.

ATTEST:  
DANNY L. KOLHAGE  
CLERK:

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Charles McCoy, Mayor

MONROE COUNTY BUILDING  
OFFICIAL

By: \_\_\_\_\_  
Joseph Paskalik

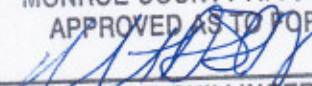
RICHARD M. OSBORNE, as Trustee

By: \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Printed Name of Witness

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

  
\_\_\_\_\_  
ROBERT B. SHILLINGER, JR.  
ASSISTANT COUNTY ATTORNEY

Date 5-1-6



IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL  
CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

RICHARD M. OSBORNE, as Trustee;  
and CONCH CONTRADA, L.C., a  
Florida Limited Liability Company,

Plaintiffs/ Petitioners,

Case No. CAK-01-108

v.

MONROE COUNTY, a political  
subdivision of the State of Florida;  
and JOSEPH PASKALIK, in his official  
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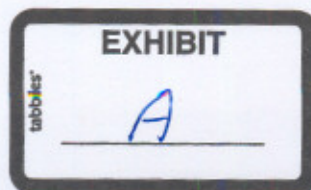
Defendant/ Respondents.

FILED FOR RECORD  
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CLERK OF COURT  
MONROE COUNTY, FLA.

SETTLEMENT AGREEMENT

Plaintiffs RICHARD M. OSBORNE, as Trustee ("Osborne"), and CONCH CONTRADA, L.C., a Florida Limited Liability Company ("Conch Contrada"), and Defendants, MONROE COUNTY, a political subdivision of the State of Florida ("Monroe County"), and JOSEPH PASKALIK, in his official capacity as Building Official ("Paskalik"), having amicably resolved their differences which gave rise to this action, hereby agree to settle this matter between them upon the following terms and conditions:

1. As to Osborne, Monroe County agrees: a) that a Major Conditional Use to construct a 35,200 sq. ft. mini-storage warehouse has been approved, with conditions, by Monroe County Planning Commission on January 27, 1997, under Resolution No. P3-97, recorded at O. R. Book 1446, pages 2205 - 2207; b) that a variance with regard to off-street parking, reducing the number of required parking spaces from 3.0 to 2.5 per 1,000



*[Handwritten signature]*



sq. ft. of floor area for the proposed mini-storage warehouse was granted by the Monroe County Planning Commission on January 17, 1997, under Resolution No. P2-97; and, c) that both development orders are presently valid and in full force and effect.

2. As to Conch Contrada, L.C., Monroe County agrees: a) that a Minor Conditional Use Development Order No. 5-99 to construct one 7,500 square foot restaurant, to relocate an existing sewage treatment facility, and to locate a shared driveway, was approved, with conditions, by the Planning Director of Monroe County on August 4, 2000, recorded in OR Book 1654, pages 1591-1595; and, b) that this development order is presently valid and in full force and effect.

3. Notwithstanding anything in any of the development orders referred to in paragraphs 1 or 2, above (and, specifically Condition No. 1 in Conditional Use Development Order No. 5-99), or any other provision of the Comprehensive Plan or Ordinances of Monroe County, no building permit shall be denied to either Osborne or Conch Contrada, L.C., on the basis of Monroe County's regulations relating to non-residential rate of growth or the adoption (or lack of adoption) of a nonresidential permit allocation system or its equivalent, including, but not limited to, the regulations set forth in Monroe County Comprehensive Plan Policies 101.3.1 through 101.3.5, and Monroe County Ordinance No. 032-2001.

4. In accordance with the development orders referred to in paragraph 1, above, Monroe County agrees to process promptly upon submittal Osborne's application for building permit for construction of a 35,200 sq. ft. mini-storage warehouse in ROGO Year 12 (July 14, 2003, through July 13, 2004).



5. In accordance with the development order referred to in paragraph 2, above, Monroe County agrees to process promptly upon submittal Conch Contrada's application for building permit for construction of one 7,500 square foot restaurant, to relocate an existing sewage treatment facility, and to locate a shared driveway, in ROGO Year 11 (July 14, 2002, through July 13, 2003).

6. Except as expressly provided herein, Osborne and Conch Contrada, L.C., Monroe County and Paskalik, waive any claim that each asserted or was capable of asserting in this cause and each shall bear its own attorney's fees and costs of this proceeding. In particular, and without limitation, Osborne and Conch Contrada, L.C., on behalf of themselves, their members, beneficiaries and any others claiming by or through them, waive all claims for damages and compensation for denial of due process and inverse condemnation (also referred to as regulatory or temporary taking) arising from the County's actions and regulations prior to the date of this Settlement Agreement.

7. The Plaintiffs Osborne and Conch Contrada, L.C. will prepare and submit to the Court a "Notice of Voluntary Dismissal With Prejudice" of their present claims against the Defendants.

8. All parties acknowledge that this agreement is entered into for the purpose of settling pending litigation and does not constitute an admission or evidence that any actions of Monroe County or its employees that Plaintiffs complain of were unlawful, unconstitutional or deprived Plaintiffs or any others of any rights or property.

Katherine Peters  
Witness  
Katherine Peters  
(Print Name of Witness)

Charles "Sonny" McCoy  
Charles "Sonny" McCoy, Mayor of  
Monroe County  
Dated 07-17-02

[Signature]  
Witness

CILLEEN GARDNER  
(Print Name of Witness)

[Signature]  
Witness

Thomas J. Smith  
(Print Name of Witness)

Michael Nichols  
Witness  
Michelle Nichols  
(Print Name of Witness)

[Signature]  
Joseph Paskalik, as Building Official  
For Monroe County  
Dated 7-16-02

[Signature]  
Richard M. Osborne, Trustee

Dated 5-21-2002

[Signature]  
Conch Contrada, L.C.  
Dated 5/20/02

Approved as to legal sufficiency

By: [Signature]  
Mark S. Ulmer, Esq.  
Special Counsel to Monroe County



IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL  
CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

RICHARD M. OSBORNE, as Trustee;  
and CONCH CONTRADA, L.C., a  
Florida Limited Liability Company,  
Plaintiff/Petitioners,

Case No. CA-K-01-108

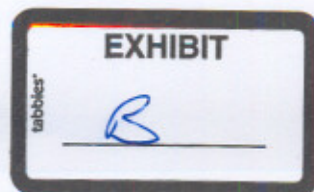
v.

MONROE COUNTY, a political  
subdivision of the State of Florida;  
and JOSEPH PASKALIK, in his official  
capacity as Building Official,  
Defendant/Respondents

AMENDED SETTLEMENT AGREEMENT

Plaintiffs RICHARD M. OSBORNE, as Trustee ("Osborne"), and CONCH CONTRADA, L.C., a Florida Limited Liability Company ("Conch Contrada"), and Defendants, MONROE COUNTY, a political subdivision of the State of Florida ("Monroe County"), and JOSEPH PASKALIK, in his official capacity as Building Official ("Paskalik"), previously resolved their differences which gave rise to the above-styled action, wherein the parties agreed to settle the matter between them upon the terms and conditions recited in the Settlement Agreement dated July 17, 2002, hereinafter "Original Settlement Agreement," attached hereto as Exhibit "A".

1. The major conditional use granted to Osborne to construct a 35,200 square foot mini-storage warehouse with 84 parking spaces plus 4 handicap spaces during ROGO Year 12, through the Original Settlement Agreement, shall be amended to allow an alternate use consisting of construction of 25,120 square foot credit union, banking or financial institution office facility requiring 74 parking spaces, plus 4 handicap parking spaces during ROGO Year 14.





2. Notwithstanding anything in any of the development orders referred to in the Original Settlement Agreement, or any other provision of the Comprehensive Plan or Ordinances of Monroe County, no building permit shall be denied to Osborne on the basis of Monroe County's regulations relating to non-residential rate of growth or the adoption (or lack of adoption) of a nonresidential permit allocation system or its equivalent, including, but not limited to, the regulations set forth in Monroe County Comprehensive Plan Policies 101.3.1 through 101.3.5, and Monroe County Ordinance No. 032-2001.
3. In accordance with the development orders referred to in paragraph 1 of the original Settlement Agreement, Monroe County agrees to process promptly upon submittal the application for building permit by Osborne or his assigns for construction of mini-storage warehouse per the Original Settlement Agreement during ROGO Year 12 or the alternative 25,120 sq. ft. credit union, banking or financial institution office facility in ROGO Year 14 (July 14, 2005, through July 13, 2006).
4. Except as expressly provided herein, Osborne and Monroe County and Paskalik, waive any claim that each asserted or was capable of asserting in this cause and each shall bear its own attorney's fees and costs of this proceeding. In particular, and without limitation, Osborne, on behalf of itself, their heirs, successors, beneficiaries and any others claiming by or through them, waive all claims for damages and compensation for denial of due process and inverse condemnation (also referred to as regulatory or temporary taking) arising from the County's actions and regulations prior to the date of this Amended Settlement Agreement.



5. Plaintiff Osborne, in cooperation with Monroe County, will prepare and submit to the Court pleadings or notice required to address the Amended Settlement Agreement.
6. All parties acknowledge that the Original Settlement Agreement was entered into for the purpose of settling pending litigation and that this Amended Settlement Agreement does not constitute an admission or evidence that any actions of Monroe County or its employees that Plaintiffs Complain of were unlawful, unconstitutional or deprived Plaintiffs or any others of any rights or property.
7. All other terms of the Original Settlement Agreement dated July 17, 2002, shall remain in full force and effect.
8. A County Code Enforcement lien currently encumbers the property. This lien will be addressed in a separate agreement between Osborne and the County.
9. This Amended Agreement shall not be valid and binding upon the parties until approved by the Court and incorporated into an Amended Final Judgment entered by the Court in these proceedings.
10. Until this Amended Settlement Agreement has been approved by the Court pursuant to paragraph 9 above, the Original Settlement Agreement and Judgment previously entered and unmodified shall remain in full force and effect.

ATTEST:  
DANNY L. KOLHAGE  
CLERK:



By: Isabel C. Derbentis  
Deputy Clerk  
Dated 03-19-03

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY

By: Dixie M. Spehar  
Dixie Spehar, Mayor

MONROE COUNTY BUILDING OFFICIAL

By: Joseph Paskalik  
Joseph Paskalik

Robert Shelling  
Signature of Witness Robert Shelling  
Printed Name of Witness

RICHARD. M. OSBORNE, as Trustee

By: David Paul Hran  
AS ATTORNEY-IN-FACT